



SOUTH AFRICA **by Marius H. Smit**

Overview

South Africa presents an interesting case where local school governance has contributed to the maintenance of quality education in functional schools in spite of an increasingly dysfunctional failing state. Also, the unique co-operative model of allowing fair and voluntary religious observances in multi-cultural public schools has achieved a significant measure of success. However, the many challenges that this post-apartheid society is facing regarding the provision of quality education for the vast majority of learners from impoverished socio-economic backgrounds, as well as dealing with the pervasive activism of a dominant politicised teachers' union, are themes that may resonate with other countries.

South Africa is a multicultural society comprised of a complex interdependent social order, shaped by colonialism and apartheid that was largely determined along racial and cultural lines. South Africa has a two-tiered economy, one developed, largely white, similar to other First World countries; and one developing, largely black, with relatively low levels of productivity and pre-industrial technology. Prior to 1994 South Africa was classified as a developed country, but is now regarded as a developing (Third World) middle income country with a GDP of R4, 014 billion in 2017/18 and a population of 55.9 million. The population growth per annum is 1.6% and the racial composition is approximately 80.1 percent black, 8.1 percent white, 8.8 percent coloured, and 2.5 percent Indian.

Legal framework

The key laws regulating education are the National Education Policy Act¹, the General and Further Education and Training Quality Assurance Act², National Qualifications Framework Act³, the South African Schools Act⁴ (the “Schools Act”), the Further Education and Training Colleges Act⁵, the Employment of Educators Act,⁶ the South African Council of Educators Act⁷ and the Higher Education Act.⁸ In addition, the Constitution of South African (“the Constitution”), with its justiciable Bill of Rights, enshrines fundamental rights relevant to education such as the right of workers in non-essential services to strike, the fundamental rights of children and the right of every citizen to basic education. At first glance South Africa has an impressive architecture of statutes and on paper there is not much wrong with the laws regulating the education system. However, the implementation of many of the provisions and the proper administration in most of the provincial education systems have been sub-optimal and in some instances wholly inadequate.

The Schools Act was designed to address a number of educational dilemmas facing South Africa in the 1990’s. The essential features of the Schools Act are that public schools are based on a system of local school governance (i.e. each school has its own governing body) and a tripartite partnership between the state, schools and parents of a school community. Imbedded in the Schools Act are democratic characteristics such as triennially elected school governors that represent parents, school personnel and learners. Every public school is endowed with juristic personality and is a separate legal entity. The devolution of authority to school governing bodies was necessitated by an inability of the state to fund education in its entirety during since the 1990s. Members of school governing bodies comprise elected parents, teachers, and students as well as non-educating staff from the school community.⁹

School governing bodies exercise governance functions including the obligations to provide leadership, supplement school funds, administer school finances, draft school policies, improve school infrastructure, and provide general support to school principals and teaching staff. The daily administration of schools and professional management of school programs remain the functions of the school principals and their management teams.¹⁰

The functions and powers of the officials and stakeholders in the education system are separated between administration, management and governance. Although the system of local school governance is favoured by most parents, there is a definite trend that provincial authorities and school principals have gradually usurped governance functions and eroded the powers of parents over the past two decades.

Structure of government-operated schooling

South Africa is a constitutional democracy with a unitary system of government that consists of three spheres: national, provincial, and local government, with significant decentralization of powers and functions, including budgeting, to the provincial and local

levels. Chapter 3 of the Constitution provides for co-operative government in South Africa between the spheres of government and between all organs of state. The principles of co-operative government entail that the different spheres of government are distinctive, interdependent, and interrelated. In terms of Schedule 4 of the Constitution, Education is a functional area of concurrent national and provincial competence. This allows for a form of co-operative federalism and entails that both central and regional (provincial) governments are competent to pass laws, and implement them, in the field of education. Accordingly, the South African Schools Act applies nationally, whereas provincial laws such as the Western Cape School Education Act, Gauteng School Education Act, Limpopo Education Act, North-West Schools Education Act only apply in the respective provinces. The provincial laws are subordinate and may not conflict with national statutes. While the national Department of Basic Education is not precluded from executing laws in areas of concurrent competence, this would be the exception rather than the rule. However, where a province cannot or does not fulfil its executive obligation in terms of legislation or the Constitution, the national executive may intervene by taking appropriate steps. This has occurred in education when the provincial departments of education of Limpopo, Eastern-Cape and North-West were placed under administration and the functions were assumed by the National Department of Basic Education.¹¹

An important aspect that underlies co-operative governance and co-operative federalism is the legal principle of subsidiarity. Subsidiarity means that the power of decision-making and conduct originally rests with the lower or more local entities, and this authority is delegated “upwards” at the discretion of the latter, not at the discretion of the central authority.¹² The essence of subsidiarity is the recognition that certain responsibilities and powers do not belong to the centre but to the lowest local level. The principle of subsidiarity, which applies in South Africa, simply means that it is wrong (and unlawful) for the higher echelons or central functionaries to usurp the autonomy of local functionaries. In this regard the higher echelons and central powers play a “subsidiary” role (hence the term ‘subsidiarity’) insofar as they provide support and, possibly, take over the functions of the lower functionary only if the latter is unable or does not fulfil its obligations.

Freedom to establish and operate non-government schools

In terms of section 29 (3) of the Constitution of South Africa independent (‘private’) schools may be established by individuals or organisations provided that it is in line with section 45 of the Schools Act. Section 46 of the Schools Act requires that an independent school may not have standards inferior to those of comparable public schools, its admission policy may not discriminate on grounds of race and it must comply with the grounds for registration of the provincial education department it is registered under. Although most independent schools are privately funded, the Minister of Basic Education may subsidize independent schools in accordance with the national schools financing policy.¹³ Many of the subsidised independent schools are religiously affiliated schools such as Catholic convent schools or Anglican missionary schools.

Homeschooling

Home education is an educational option which is growing in popularity in South Africa.¹⁴ Although the exact figures of learners undergoing home education in South Africa are not available, because some Home Schooling parents are hesitant to register or participate in a census for fear of prosecution by the state, the Census 2011 report indicated that 56 857 learners between ages 5 and 24 years received home education.¹⁵ Home education was illegal in South Africa until the Schools Act came into operation in 1997. Section 51 of the Schools Act provides that a parent may apply for registration of home-schooling of a learner and the provincial Head of Department may require compliance with reasonable conditions such as that the education at home will meet the minimum requirements of the public school curriculum and that the standard is not inferior to education provided at public schools. The Schools Act provides that if a learner who is subject to compulsory attendance is not enrolled at or fails to attend a school, the provincial Head of Department ('HoD') may investigate the circumstances of the learner's absence from school and take appropriate measures to remedy the situation. However, inspections at the homes of families, and searches and seizures based on the fact that children are being educated at home, in the absence of any reasonable suspicion of criminal activity, would be an infringement of the right to privacy of parents or legal guardians. Home educating families are protected as inspections, searches and seizures may only be conducted if there is a reasonable suspicion, which could justify a search warrant, of neglect maltreatment or criminal conduct that affects the child or children.

A HoD may exempt a learner entirely, partially or conditionally from compulsory school attendance if it is in the best interests of the learner. However, if a parent does not comply with the compulsory school attendance provisions without just cause, the parent may be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

Public funding of schools

The South African state has a constitutional obligation to provide basic education to all and must fund public schools from public revenue on an equitable basis in order to ensure the proper exercise of the rights of learners to education and to redress past inequalities in education provision.¹⁶ Approximately 21% of the Gross Domestic Expenditure of the state is annually allocated towards education. Public schools are funded according to a Quintile system which entails that public schools are categorised into quintiles according to the financial means and socio-economic contexts of the school community in which the public school is situated. Under the amended Norms and Standards for School Funding, schools are ranked and categorized nationally in quintiles (from 1 to 5, where 1 is the poorest and 5 the wealthiest), and more expenditure is reallocated to the poorest schools and the poorest provinces. The Quintile 1 to 3 are so-called 'No-fee'-schools and these schools may not charge any school fees. Although the No-fee schools may raise additional funds voluntarily, in practice it seldom occurs and these schools are funded for the most part by the state. Overall there is also a mismatch in how schools are funded and the resources they actually need as state funding does not match the level of (previous

obligatory) school fees. The allocation of schools to quintiles also does not reflect the actual level of deprivation of children in the school as the indicator is based on catchment area, rather than actual school choice. As a result, some schools effectively lost funding after the abolishment of school fees (particularly those in Q1 to Q3).¹⁷

Quintile 4 and 5 schools are in essence semi-private as they may charge additional school fees. School governing bodies in the wealthiest fourth and fifth quintile have however been found to set high fees, without making exemptions for poor children to limit access of these children, effectively reinforcing the duality of the system.¹⁸ It is conservatively estimated that this additional “school tax” that is paid by some parents amounts to approximately 15% of the annual public schooling budget. The state must, on an annual basis, provide sufficient information to public schools regarding the funding to enable the schools to prepare the budgets for the next financial year. The national Minister of Basic education determines national quintiles for public schools after consultation with the Council of Education Ministers (i.e. the provincial MEC’s) and the Minister of Finance in terms of the National Norms and Standards for School Funding. Section 48 of the Schools Act also provides that the Minister may grant subsidies to independent schools. The independent schools that receive state subsidies are by and large schools with a religious ethos (e.g. traditional Roman Catholic or Anglican missionary schools) that are situated in less affluent rural or urban areas.

Support for families

In terms of the South African common law, parents are the primary educators of their children.¹⁹ This entails that parents have the right and legal duty to care for, maintain, support and raise their child. It follows therefore that parents should have the first right to determine what type of upbringing and education would be best for their child or children. It is an established legal principle that the custodian parent can decide on in which religion to raise the child, irrespective of the other parent’s religion or wishes.²⁰ However, neither the rights of parents nor of children are absolute. In terms of South African law the High Court is the upper-guardian of all children. As such the High Court has inherent jurisdiction to decide on all matters concerning a child.

The local school governance system enables parents to be more involved in public schools because they elect representative members of school governing bodies triennially, they have to approve the school’s budget at an annual general meeting, and parents can serve on various committees (such as the financial-, sport-, culture, academic, disciplinary-, policy and infrastructure committees).

Approximately 70 percent of all learners in public schools are provided one nutritious meal by means of the National School Nutrition Programme (the “NSNP”). Indigent parents, in particular, are assisted as the NSNP ensures that needy children are fed on a daily basis. The NSNP is one of the factors that has ensured that approximately 98,9% of all eligible learners attend school, which compares very favourably with developed countries.

Many religious parents are fundamentally committed to instilling particular values and beliefs in their children. However, the parents' rights will be weighed up against the right of the child to a basic education and the paramountcy principle²¹ that protects the best interests of a child. In determining what is best for the child, a wholly individualised approach to each case should be followed and the prevailing social, cultural and religious norms as well as the particular circumstances, family relations and opinions of role players such as social workers should be considered in the equation.²² In the home-schooling case of *Schneider NO v AA* ('*Schneider*')²³ Davies J, did not simply consider the merits of home schooling in general, but focussed on what method of education was best suited to the particular children. The High Court placed significant weight on the opinion of the educational psychologists (as expert witnesses) and held, in the *Schneider*-case, that public education would be in the best interest of the children. From the reasoning of the court in *Schneider*, it is therefore clear that every case of home schooling will be judged on its own merits and that no hard fast rule can be made to guarantee a parent's choice to home school a child.

Distinctive character of schools

In terms of the Schools Act the governing body of a public school may determine its vision, mission, religious policy, language policy and extra-curricular policy. Accordingly, most public and independent schools have distinctive characters that are moulded by the vision and mission of a school. Many independent schools also have a distinct religious character based on a denominational creed or a particular faith. South African schools are classed either as ordinary (mainstream academic) or special education schools. In turn, schools that cater for learners with special needs are divided into schools for the Medium Intellectually Disabled (MID) and schools for the Severely Intellectually Disabled (SID). Departmental policy also allows for so-called 'focus schools' that offer particular curricula such as Performing Arts schools, Agricultural high schools and Technical high schools. Some of the well-established, traditional public or independent schools have a history of excelling at sport and have accordingly developed into 'elite' sport schools.

In a pluralist society and liberal democracy such as South Africa, diverse interests regarding values, worldviews and religious or cultural traditions are almost a certainty in schools. Freedom of religion, belief, thought, conscience and opinion is protected as a fundamental right in terms of the Constitution of South Africa.²⁴ Section 15(2) of the Constitution contains the interesting feature that provides that religious observance is allowed at public schools, on condition that it follows the rules ('policy') made by the governing body, that it is conducted on an equitable basis, and that attendance is free and voluntary. The so-called 'co-operative model', which is followed in South Africa, has the state and public schools co-operating to allow for religious expression in the public realm in a manner that is fair and non-coercive. Although attempts have been made to challenge this in cases such as *Wittmann v Deutsche Schulverein*²⁵ and the widely publicised matter of *OGOD v Randhart Primary School and others*²⁶ the courts have consistently affirmed the legality and constitutionality of allowing religious observances in public schools. The important outcome of *Randhart* is that the court affirmed that the local school governing body must formulate and determine an appropriate religion policy for each particular

school and in accordance with the principle of subsidiarity this function may not be centralised or usurped either by the courts or regional or central government. As a result, many public schools in South Africa have retained a religious character and religious values, in conjunction with other moral and societal values may be taught.

Decisions about admitting pupils

Over the past two decades, school choice opportunities had been greatly extended in South Africa after regulations were promulgated in terms of the National Education Policy Act (“NEPA”) that enabled parents to send their children to public schools outside their own geographically determined feeder zones.²⁷ As a result of these open school choice opportunities, most areas in South Africa experienced significant movement or migration of learners from less successful schools to more functional and effective schools. There has been an exodus of learners from rural areas to township schools, an influx of learners from townships to suburban schools and a concomitant exodus of middle-class (primarily white and Indian) learners from public suburban schools to independent schools. Successive education ministries have also embarked on various educational reforms, as part of the overall policy to transform society, to enable access to historically privileged (“white”) schools and to promote equity and equality in the education system.

As a result of historical racial inequalities, the rights to education and admission to public schools in South Africa are highly contentious and have been litigated in a number of cases.²⁸ Section 9(3) of the Constitution is an anti-discriminatory provision prohibiting unfair discrimination, directly or indirectly, against anyone based on race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. The effect of this clause is that it forbids admission requirements which may discriminate unfairly such as the inability to pay school fees or language proficiency tests. *Matukane and others v Laerskool Potgietersrus*²⁹ is the watershed case in South Africa (similar to the *Brown v Board of Education*-case of the USA) dealing with a public school’s refusal to admit African students by virtue of their culture. The High Court held that although differentiation based on culture and language is not unconstitutional *per se*, the admission policy of the public school in question was unconstitutional because it unfairly discriminated against black students based on race.

The cases dealing with this issue of “equal” access to education versus “quality” of education have primarily revolved around the apparently restrictive admission policies of quality middle class public schools³⁰ as well as the single medium language policies of Afrikaans schools.³¹ The question whether a school governing body is entitled to determine the school’s capacity for admission of learners or whether the provincial government has the authority to do so came to a fore in the matter of *Member of the Executive Council for Education, Gauteng Province v Governing Body of the Rivonia Primary School (Rivonia Primary School-case)*. The governing body refused admission of a Grade 1 learner on the ground that she was 20th on the waiting list. The governing body had determined the admission policy and capped the capacity for Grade 1 learners at 120. However, the school itself applied the policy flexibly when it admitted four extra

learners, thus exceeding the maximum capacity set in its policy. The child's mother refused to accept the school's decision and obtained the support of the provincial education department officials. After the school year had commenced, the Head of the Department ("HoD") instructed the principal to admit the learner. Before the governing body could meet to consider the instruction, officials of the department arrived at the school and summarily deposited the girl in a classroom. The HoD for Education, Gauteng Province conceded that the school governing body had the power to determine the admission policy and capacity of a school in terms of section 5(5) and section 5A of the Schools Act. However, the HoD contended that the power of the school governing body to determine the admission policy should not be overstated and was subject to confirmation by the provincial Department of Education. The school contended that the Gauteng Education Department was not entitled to act contrary to the school's admission policy and that the Gauteng Regulations were in conflict with the national statute (Schools Act). On appeal the Constitutional Court held that while the school governing body determines admission policy, individual decisions on admission are taken only provisionally at school level, by the principal acting under delegated authority of the HoD. The Court held that the Department maintains ultimate control over the implementation of admission decisions. The Gauteng Regulations furthermore afforded the Gauteng HoD the specific power to overturn a principal's rejection of a learner's application for admission. The *Rivonia Primary School*-case is an archetypical example of a dispute that is the result of the intense competition to gain access to schools offering quality education.

Education departments embarked on various methods to increase the admission of African students from disadvantaged backgrounds to better quality schools. The Regulations on Admission Policy for Ordinary Public Schools³² (the "NEPA Admissions Regulations") changed the restrictive school zoning rules for admission by providing for three exceptions to the domicile-rule, namely:

- a) the children of parents who live within the feeder zone or children of parents who live at their employer's domicile within the feeder zone have the right to attend a school within that zone. This provision was aimed at allowing the children of domestic workers in urban and sub-urban areas to gain admission to historically privileged white schools;
- b) parents of children whose work falls within a school feeder zone may apply for the admission of their children to a school within the zone of the workplace. This provision enabled the many workers that commuted from townships and outlying areas to the workplace, to apply for admission for the children at schools in the workplace area;
- c) Section 34(b) of the regulations contained the final exception to the domicile rule and provided that "a learner who lives outside the feeder zone is not precluded from seeking admission at whichever school he or she chooses". The effect of this provision was that once all the children of parents who live and work within a school zone had been accommodated, any other child - irrespective of parental domicile or place of employment - could apply for admission to the school.

Open enrolment and the elimination of race-based allocation of educational resources meant that black middle- and working-class children now had access to better schools. The ultimate effect of these regulations was that the open school choice was gradually utilised by an increasing number of parents whose children had previously been restrained from attending good quality schools.

Another measure used by the Gauteng Education Department is an online admission system which requires parents to submit application for admission to public schools by registering their children the departmental website. The legality of the Regulations Relating to the Admission of Students to Public Schools was challenged in the matter of *Federation of Governing Bodies for South African Schools (FEDSAS) v Member of the Executive Council for Education, Gauteng and Another*.³³ The central issues were whether the regulations were inconsistent with the Schools Act or the applicable provincial law, or were invalid because of irrationality or unreasonableness. FEDSAS contended that the Schools Act provides that a School Governing Body's must determine a school's admission policy and has to approve or decline the applications. The Constitutional Court held that the regulations were lawful and reasonable but ordered the Member of the Executive Council for Education, Gauteng (the 'MEC'), to establish and regulate appropriate feeder zones for public schools in Gauteng in consultation with the schools. In a cynical move the Gauteng Education Department published the Gauteng School Feeder Zone Regulations that provided for a school zone radius of 30 kilometres. In practice this means that the Gauteng Education Department can place any learner in any of up to fifty public schools in an urban or sub-urban area. This creates uncertainty and restricts every affected school's ability to plan appropriately for the forthcoming year. It is very likely that 'Gauteng school feeder zones' will be challenged in court based on grounds of unreasonableness, illegality and unjust administrative action.

Decisions about staff

The appointment and transfer of educators had been a fiercely contested issue in South Africa education over the past three decades. A school governing body has the function in terms of section 6(3)(a) of the Employment of Educators Act³⁴ to recommend the appointment of an educator at the school. The recommendations are sent to the relevant provincial HoD who approves it and makes the appointment or transfer provided that the legal requirements and procedures have been met. However, the sheer number of cases litigated on the matter of staff appointments is indicative of the tension and power struggle that exists between school governing bodies on the one hand, and provincial education departments and teachers' unions on the other.³⁵ There are contradictory perspectives on the level and extent of autonomy of school governing bodies' vis-à-vis education departments' concern for improvement of quality of education. The correct selection and appointment of employees is an important function that determines the success of any organisation or institution. Most concerned parents are acutely aware that the calibre of educators teaching at schools is a factor of critical importance determining the effectiveness and quality of education. In schools where certain educators do not meet the desired standard of performance, the poor results and inefficiency causes parents to either challenge the actions of the education authorities or to remove their children and enrol them at alternative schools that provide better education.

The legal and administrative requirements for valid transfers of educators are firstly, an affected educator must give prior approval and consent to the intended transfer,³⁶ secondly, and appointment by transfer must be approved and recommended by the governing body,³⁷ thirdly, the procedure to be followed when appointing or transferring an educator (or staff member of a school) must comply with the Personnel Administration Measures ('PAM'), which are regulations to the Employment of Educators Act.

The legality of the promotion, transfer, interviewing, selection and recommendation processes have been contested in a number of cases concerning the appointment of educators.³⁸ At times, education authorities have used alternative terminology such as 'secondment', 'temporary transfer' and 'redeployment' in an artificial attempt to differentiate 'placement' from transfer requirements. The reasoning seemed to be that if an alternative epithet was attached to a government action, then the normal legal requirement would not apply. However, the Courts have steadfastly adhered to the principle that the 'substance' of an action and not the nominal 'form' is the determining factor. In other words, no matter what the placement of educators is 'officially' termed, if the effect is that of a transfer, then the legal requirements applicable to transfers must be adhered to.

The HoD must decline a recommendation from the governing body if the governing body did not ensure that the principles of equity, redress and representivity were complied with; the procedures agreed upon were not followed; the criteria agreed upon were not applied; the decision is not in compliance with the legislative requirements; the decision was the result of undue influence; or the recommendation did not have regard to the democratic values and principles.³⁹

Accountability for school quality

There is an acute lack of accountability and adequate service delivery in the basic education sector of South Africa.⁴⁰ According to Schedler the essential elements of accountability are enforcement, monitoring and answerability.⁴¹ Accountability is inextricably linked to democratic management and other related concepts such as participation, decentralisation, empowerment and transparency.⁴² Accountability follows the exercise of power, use of resources and implementation of policy.⁴³

In South Africa, the system of educational accountability is linked to the wider notion of democratic accountability. School inspections, regular monitoring and standardized accountability interventions, are however largely absent in South Africa; given their historic role of authoritarian control during the apartheid era, these are viewed with suspicion by most members of the dominant teachers' union, i.e. the South African Democratic Teachers' Union ('SADTU'). Current measures that exact some form of accountability include the annual assessments in primary education (ANA, Grades 1, 6 and 9), a matriculation or exit examination in secondary education, monitoring of schools through district visits, and (in some schools) the use of EMIS (Educational Management Information Systems). These are expected to inform the accountability relation between school staff and school management teams, school management teams and the school

governing body, and schools and districts. The South African Council of Educators (SACE), which has a formal role of upholding professional standards for teaching through a Code of Professional Ethics, oversees the teaching profession. SACE can caution or reprimand educators, impose a fine and remove the name of an educator from its register, either for a specified period or indefinitely (or subject to other specific conditions). These interventions have however not been effective in improving learning outcomes in South Africa, mainly because of widespread unprofessional attitudes and incompetence of educators⁴⁴ and particularly misuse of power by SADTU. School governing bodies have, in many cases, not been able to effectively oversee school management teams due to lack of competence of parents on the board, and power imbalances between parents and the staff representation on the body. There is a lack of sustainability in implementing and monitoring national reform programmes, causing a system that is overburdened with change and preventing any real answerability.⁴⁵

Many researchers including Van den Berg *et. al.*⁴⁶, the Volmink Commission⁴⁷ and Heystek⁴⁸ confirm that the largest teacher union (SADTU) remains strongly opposed to national policies that may allow for inspections, monitoring or control of the quality of educators' work, even where accountability systems are disconnected from punitive measures. Examples are SADTU blocking principals' and teachers' performance contracts, and preventing the council of educators (SACE) from taking disciplinary actions against educators.⁴⁹ The Volmink task-team found that there had been widespread selling by SADTU of teaching appointments for cash and concluded that SADTU had a "stranglehold" over six of the nine provinces (the exceptions being the Western and Northern Cape and the Free State) exercising "de facto control" over their education departments. The entire union, not just a few rogue elements, was found to be involved.⁵⁰ The many examples of corruption and an overall lack of interpersonal trust further inhibit any form of effective accountability.⁵¹

The International Monetary Fund (IMF) recently released a report that affirmed that South Africa spends more on education than most countries yet performs exceptionally poorly in comparison; the teachers in public schools are comparatively well paid but many are absent, lazy, incompetent and unaccountable to anyone.⁵² The IMF research team found that 20% of public school educators do not appear for work on Mondays and Fridays and a third are missing at month-end. In township and rural schools the educators teach only an average of 3.5 hours per day, while in Quintile 4 and 5 schools the educators teach an average of 6.5 hours per school day. Although there are pockets of excellence and on the whole the Quintile 4 and 5 schools maintain a good quality education, South African schools fared very poorly in the three major cross-national assessments, i.e. the Progress in International Reading Literacy Study (PIRLS – Grade 4 and 5), the Trends in International Mathematics and Science Study (TIMSS – Grade 8 and 9) and the SACMEQ (Grade 6) because approximately 80% of the educators lack content knowledge and pedagogical skills to teach the subjects that they are currently teaching.⁵³

Teaching values

In terms of the 'co-operative model', the state and public schools co-operate to allow for religious expression in the public realm in a manner that is fair and non-coercive. As a result of this feature, many public schools in South Africa teach religious values in conjunction with other moral and societal values. Societal, moral and democratic values are also taught in the compulsory subjects of Life Skills (in the Gr. R-3 Foundation Phase) and Life Orientation in the General and Further Education Phases (Gr. 4-12). Values such as respect for human dignity, equality and the unlawfulness of unfair discrimination *inter alia* based on race, gender, age, language and religion, freedom of expression, religious freedom, social and environmental responsibility and personal attitudinal values such as healthy self-esteem, diligence and discipline are taught by educators specifically trained in this field of study. All learners must complete and pass the examinations in the subject called Life Orientation. However, Life Orientation is not a subject that counts towards eligibility for admission to a university or college.

Conclusion

The South African education system is still in a transformation process. Although all of the formal apartheid laws and policies have been abolished, factors such as cultural differences, differences in levels of socio-economic development, deficient content knowledge and lack of pedagogical skills by many educators, and the political tradition of protest, entitlement and activism by the dominant teachers' union, still restrain optimal progress in the education sector. The clear trend of privatisation of education by the establishment of more independent schools, home education and private universities will continue to rise as a result of the state's failure to provide quality education.

On the bright side, in spite of significant societal difficulties such as a struggling education system, the high crime rate, massive unemployment and a stagnant economy, there is still an overriding sense of hope and goodwill among most of the people of South Africa. Perhaps the fact that moral values are taught in schools and there is general commitment to democracy and local school governance, most of the stakeholders remain positive about progress, continuous reform and gradual improvement of the education system.

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- ²⁵ *Wittmann v Deutscher Schulverein, Pretoria* 1998 (4) SA 423 (T).
- ²⁶ *Organisasie vir Godsdiens Onderrig en Demokrasie v Laerskool Randhart and others* (Council for the Advancement of the South African Constitution and others as amici curiae) [2017] 3 All SA 943 (GJ).
- ²⁷ See note 1.
- ²⁸ See, for instance, *Head of Department, Department of Education, Free State Province v Welkom High School and Others* [2013] ZACC 25; 2014 (2) SA 228 (CC); 2013 (9) BCLR 989 (CC); *MEC for Education, Gauteng Province and Others v Governing Body, Rivonia Primary School and Others* [2013] ZACC 34; 2013 (6) SA 582 (CC); 2013 (12) BCLR 1365 (CC); and *Head of Department, Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another* [2009] ZACC 32; 2010 (2) SA 415 (CC); 2010 (3) BCLR 177 (CC).
- ²⁹ *Matukane v Laerskool Potgietersrus* [1997] JOL 102 (T).
- ³⁰ *Governing Body of the Rivonia Primary School and another v Member of the Executive Council for Education, Gauteng Province and others (Equal Education and another as amici curiae)* [2013] JOL 29909 (SCA).
- ³¹ *Middelburg Laerskool en die Skoolbeheerliggaam van Middelburg Laerskool v Hoof van Departement, Departement van Onderwys, Mpumalanga* 2003 (4) SA 160 (T); *Western Cape Minister*

of Education v. Governing Body of Mikro Primary School. 2005 (3) SA 436 (SCA); *Seodin Primary School v. Northern Cape Department of Education*. Case no. 117/2004 (NC); *Head of Department Mpumalanga Education Department v Ermelo High School and others (Ermelo)* 2010 (2) SA 415 (CC).

³² Regulations on Admission Policy for Ordinary Public Schools.

³³ *Federation of Governing Bodies for South African Schools (FEDSAS) v Member of the Executive Council for Education, Gauteng and Another* (CCT 209/15) [2016] ZACC 14 (20 May 2016).

³⁴ Section 6(3)(a) provides as follows: “ ... Any appointment, promotion or transfer to any post on the educator establishment of a public school or further education and training institution, may only be made on the recommendation of the governing body of the public school or the council of the further education and training institution ...”

³⁵ *Kimberley Girls’ High School v. The Head of the Department of Education, Northern Cape Province and others*, (High Court of South Africa: Northern Cape division, case no. 32/2003); *The Federation of the Schools Governing Bodies and others v. The Head of Department: Northern Cape and others* (High Court of South Africa: Northern Cape Division, case no. 1246/03); *Laerskool Gaffie Maree, the Governing Body of Laerskool Gaffie Maree v MEC for Education: Northern Cape & the Head of Education: Northern Cape & Lucas Edwards* (High Court: Northern Cape Division: Case no. 1240/01); *Nozuko Amanda Mahlasela and others v The Head Western Cape Education Department and another* (High Court: Cape of Good Hope Provincial Division: Case no. 2446/01).

³⁶ *Simela v MEC for Education, Eastern Cape* [2001] 9 BLLR 1085 (LC).

³⁷ *FEDSAS, Limpopo v Department van Onderwys; Limpopo Case no. 30801/2003 (TPD)*.

³⁸ *Head, Western Cape Education Department and Others v Governing Body, Point High School and Others* 2008 (5) SA 18 (SCA); *Carnavon High School and another v MEC for Education, Northern Cape* 1999(4) SA (NC); *Douglas Hoërskool v The Premier of the Northern Cape Province* 1999(4) SA 1131 (NC).

³⁹ Section 7(1), Employment of Educators Act.

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⁵⁰ See note 45 above.

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